UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/51/453/Add.1
29 October 1996

ORIGINAL: ENGLISH

Fifty-first session
Agenda item 110 (b)

HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Recommendations made by the Special Representative of the Secretary-General for human rights in Cambodia on matters within his mandate

Report of the Secretary-General

Addendum

Comments and clarifications submitted on 17 September 1996 by the Government of Cambodia on the report of the Secretary-General on the human rights situation in Cambodia

1. The Government of Cambodia acknowledges with sincere thanks receipt of the draft report of the Secretary-General on the human rights situation in Cambodia (A/51/453).

2. As far as the draft report is concerned, the Government of Cambodia is of the view that there are a number of points that correctly assessed the gradual progress made in the implementation of democracy and human rights in Cambodia.

3. However, the Government has ascertained that the draft report also contains other points that do not reflect the political will, determination and great effort of the Government of Cambodia in the implementation and improvement of the democratic and human rights process in Cambodia and for that reason it would like to make a few comments and clarifications.

1. Children's rights

4. The issue of children's rights in Cambodia is one of the highest priorities of concern to the Government. Therefore, the Government has adopted different laws and regulations to protect children's rights in accordance with international conventions.

5. Although a great effort has been made by the Government, with the active participation of non-governmental organizations, in the implementation of these laws and regulations, there is still abuse of children's rights, as is well known. Child sex workers, who come from poor families, still exist and they continue to exist and they continue to exist because of bad morality and the inadequacies of some local authorities' officials.

6. In pursuit of the objective of protecting children's rights, the law on "Protection of Kidnapping, Human Trading and Exploitation" was promulgated on 29 February 1996. Article 3 of that law clearly states that those who engage in human kidnapping and exploitation will be imprisoned for from 15 to 20 years.

7. The Cambodian National Council for Children (CNCC) was created in November 1995, with the Co-Prime Ministers as Honorary Chairmen and the State Secretary of Social Welfare, Labour and Veteran Affairs as Chairman. This Council has as its primary responsibility to promote the implementation of the Convention on the Rights of the Child in Cambodia. In the near future, the Government will draft another law on drug control, which strictly condemns those who grow addictive plants, or who produce, use, distribute and trade in illegal drugs.

8. Following is a list of some of the legal documents that have been adopted to ensure and promote the implementation in Cambodia of the Convention on the Rights of the Child:

(a) Labour Law (1992);

(b) Law on Marriage and the Family (1989);

(c) Penal Code in Transition (1993);

(d) Constitution (1993);

(e) Sub-decree No. 17 on Youth Rehabilitation;

(f) Policy Programme of the Royal Government (1994);

(g) Decision No. 34 (28 March 1994) on the establishment of an inter-ministerial committee to prepare a report on human rights for the United Nations;

(h) Directive No. 474 of the Ministry of Interior (2 June 1994) on the establishment of associations;

(i) Directive No. 476 of the Ministry of Justice (9 September 1994) on relocating children in prison to the Youth Rehabilitation Centre;

(j) Decision No. 79 (23 June 1987) of the Council of Ministers on the policy for placing orphans and homeless people in the State Homeless Centre;

(k) Decision No. 79 (23 June 1987) of the Council of Ministers on the adoption of orphans by Cambodians;

(l) Letter No. 549 (25 March 1991) from the Council of Ministers on the proposal for the adoption of orphans by foreigners;

(m) Decision No. 181 (20 December 1990) of the Council of Ministers on labour rehabilitation, vocational training and payments to the disabled;

(n) Directive No. 1300 (12 July 1982) on working hours and holidays;

(o) Decision No. 291 (12 February 1983) on insurance policies;

(p) Decree No. 30 (20 November 1986) of the Council of Ministers on the general education system;

(q) Decision No. 42 (20 December 1991) on the Council of Ministers on scholarships and assistance for internships;

(r) Letter No. 1621 (21 October 1992) from the Ministry of Education on human rights education, the crime of genocide, the protection of women, morality, traffic law, health and food;

(s) Letter No. 21 (12 October 1993) on the teaching of human rights at primary and secondary schools;

(t) Law (29 February 1996) on protection of kidnapping and human trading and exploitation;

(u) Sub-decree establishing the Cambodian National Council for Children (20 November 1995) concerning the implementation in Cambodia of the Convention on the Rights of the Child and of government policies relating to the rights of children.

9. The Government will also take strict measures:

(a) To bring to court all those who have engaged in sexual trading;

(b) To close down all brothels and hotels/guest houses that continue to abuse children's rights.

10. However, as previously stated, Cambodia has faced difficulties in implementing the Convention and the laws and policies. Therefore, education and implementation must go hand in hand with each other, which means that the Government, the Centre for Human Rights and non-governmental organizations must work actively together.

11. As a country that has survived war and genocide, Cambodia needs both moral and material assistance from the world community, especially the United Nations. But it also requires good coordination to avoid confusion and duplication. Indeed, it will impede the development process if the wrong decisions are made owing to a lack of coordination.

2. State of law and independence of the Court

12. The National Assembly and the Government often consider how to strengthen the state of law in Cambodia. The Prime Ministers and other ministers never interfere in the juridical affairs. In cases where a complaint is lodged against the Government, the Government always appoints a lawyer to represent it.

13. The Ministry of Justice is in charge of the courts but only deals with administrative matters and does not interfere in the judicial decision-making process. The Ministry often takes strict measures, such as rotating staff or removing those who commit an offence, in order to prevent the court system from becoming corrupt.

14. Concerning the transfer or appointment of judges and the General Prosecutor, which is the right of the Supreme Council of Magistracy, the Ministry of Justice has prepared a report for submission to the Supreme Council of Magistracy for its consideration and approval on measures related to nomination, transfer or punishment of judges and the General Prosecutor, especially when offences are committed.

15. The Constitutional Council, whose duty it is to safeguard respect for the Constitution and to interpret it and the laws passed by the National Assembly, does not yet have an organic law to define its organization and functioning because the Council does not yet have the sufficient number of members. The National Assembly has not yet appointed its representative; in addition, one of the King's representatives died and the Supreme Council of Magistracy, which has still to appoint three members, has not yet held its first meeting.

16. However, the Government attaches great importance to the drafting of legislation on the organization and functioning of the Constitutional Council. The two Prime Ministers have given high priority to this matter and it is hoped that the Supreme Council of Magistracy will soon be conveyed.

17. There is sometimes a problem of disregard of court decisions in civil trial cases but the Government makes an effort to backstop the effective enforcement of these decisions. The disregard of court decisions will be dealt with in the proposed civil code to be adopted by the National Assembly.

18. There are 130 judges and prosecutors for all the courts in Cambodia. This number is insufficient to meet the requirements of the country. To tackle this problem the Ministry of Justice in collaboration with the Government of France trained 42 judges and prosecutors in 1995.

19. The proposal for the nomination of these newly trained judges and prosecutors is pending and awaiting the decision of the Supreme Council of

Magistracy. In addition to the assistance provided by the Government of France, the Government of Cambodia has also requested the United Nations to encourage its Members States to help in the provision of training of Cambodian judges.

20. Legal proceedings in penal and civil cases often experience delays in countries where there is a shortage of judges, low economic development and insecurity. However, delays are not always caused by a lack of judges, they are sometimes a result of limited government finances making it difficult to travel for the purpose of investigation and to obtain evidence. For example, if a criminal has escaped and fled to the jungle under Khmer Rouge control, an arrest cannot be made because of an inability to obtain evidence for accusation and filing in the legal proceeding.

21. In principle, a judge has privileges in reaching a decision. After receiving a complaint or accusation from the prosecutor in a penal case, the judge always investigates the background and searches for evidence before sending the case to court. In all proceedings, both parties, the accuser and the accused, have a chance to defend themselves and are questioned. For cases in which the parties concerned have lawyers, the court always provides them with time to study the file. According to the law, a lawyer has 15 days to study the file before proceeding. In criminal cases, a lawyer must be provided to the accused, if he or she does not have a lawyer. All decisions of the court are made in accordance with legal procedure. Inappropriate decisions of a lower court will be rejected by the higher court.

22. Another unavoidable situation is that most of the judges were appointed by the previous Government, which governed almost all territory of Cambodia and had an established court system. Though they were appointed by the former regime, the judges are competent and can ensure the independence of their decisions. Not all of the judges are members of the Cambodian People's Party; some belong to other political parties, which is their right.

23. All court decisions are subject to implementation. Nevertheless, weaknesses remain in implementation, such as delays in releasing prisoners when their sentence expires owing to a lack of understanding and negligence on the part of the staff. The Ministry of Justice from time to time advises and directs those who implement the decisions of the courts and punishes those who breach those decisions.

3. Elections

24. The Government of Cambodia expresses its position strongly that the election of commune chiefs and the general elections will be held in 1997-98 based (a) on free and fair and democratic principles and (b) on the principle of sovereignty of the Kingdom of Cambodia, and with the presence of local and international observers.

25. The Government would like to suggest some corrections in the report (A/51/453), as follows:

(a) Paragraph 78: the total number of communes in Cambodia is 1,453 (not 1,200 as stated in the report);

(b) Paragraph 81: the third sentence should read: "The Electoral Law Drafting Commission has already finished the drafting of the law on the administration of communes and the law on commune election and is currently drafting the law on general election."

26. According to the plan of the Ministry of Interior, the draft laws will be submitted to the Government's Cabinet for consideration and approval and will be forwarded to the National Assembly for adoption before the end of 1996.

27. The draft law on the election of commune chiefs stipulated measures to ensure safety and security at election time. All members of the armed forces and officials working in the Elections Committee and the Control Committee will have neutral position in the election period and in implementation. The draft law provides for equal opportunities in the use of propaganda in the campaign, the confidentiality of the election and punishment for those involved in election offences.

28. Both the national and international non-governmental organizations and the international organizations can send representatives to be observers with the Elections Committee and the election offices.

29. The laws mentioned above were drafted by the Ministry of Interior with the participation of representatives of non-governmental organizations. In the report:

(a) Paragraph 82 should be deleted since it is now covered in new paragraph 81;

(b) Paragraph 132 (b) should also be deleted as it is now covered in new paragraph 81.

30. The Government expresses the hope that these comments will, to some extent, contribute to a better understanding of the efforts made so far by the Government to improve the human rights situation, notwithstanding the countless difficulties and lack of human and financial resources faced by the Government, at a time when it is simultaneously attempting to address other priority problems.

(Signed) NORODOM Ranariddh
First Prime Minister

(Signed) HUN Sen
Second Prime Minister